THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 18511 of 2006

07-09-2006

Between:-

V. Ravindra Babu

Petitioner

And

Union of India, rep., by General Manager, South Central Railway, Rail Nilayam, Secunderbad and two others.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 18511 of 2006

Oral order:

The writ petition is misconceived. Fundamentally what is assailed herein is the termination by respondents of a contract with the petitioner, with effect from 20-06-2006, purportedly under Clause 62 of the General Conditions of Contract (for short 'the GCC'), while informing the petitioner that the work would be entrusted to another agency for execution at his risk and cost and that the amount of liquidated damages, if any, will be advised to the petitioner in due course.

The petitioner claims to be a Contractor accredited to the railways for several years. The 3rd respondent issued a tender notificaation dated 02-11-2005 inviting bids for

the work of repairs to service buildings and workshop at Lalaguda, Secunderabad. The petitioner submitted his tender to the 3rd respondent on 09-12-2005, specifying a validity of ninety (90) days from the date of the offer. According to the petitioner, the validity of his tender expired by 08-03-2006. The petitioner asserts that he has not received any letter of acceptance of his bid from the respondents by 08-03-2006.

While so, on 24-04-2006, the petitioner received a letter from the 3rd respondent complaining of the slow progress of work under Clause 16 of the GCC and threatening further action in terms thereof. Earlier on 21-04-2006, the petitioner addressed a letter to the 3rd respondent to release the E.M.D., which he had furnished by way of a fixed deposit receipt, since the tender submitted by him was not finalized within ninety days.

After receipt of the petitioner's letter dated 21-04-2006, the petitioner alleges, the 3rd respondent issued a letter dated 24-04-2006 complaining of slow progress of work. The petitioner addressed another letter dated 08-05-2006 reiterating his request for refund of the E.M.D. No action was taken on that letter. On 31-05-2006 the petitioner received a letter from the 3rd respondent containing two notices, one providing seven days for completion of work under Clause 62 of the GCC and

another dated 24-04-2006 complaining about the slow progress of work accompanied by a Xerox copy of an acceptance letter dated 08-03-2006. The petitioner then went to the office of the respondent Nos. 2 and 3 for verification of this acceptance letter, but was not shown any such letter. The petitioner specifically asserts that he has not received any acceptance letter from the respondents on or before 08-03-2006 and that the so called acceptance letter was received only along with the letters enclosed in the communication of the 3rd respondent dated 30-05-2006. Thereafter, the impugned communication was issued terminating the contract and intimating the petitioner that liquidated damages may be levied and the work entrusted to another agency for execution at the petitioner's risk and cost.

As on date, since it is the petitioner's contention that there was no concluded contract, the unilateral determination by the respondents by the impugned proceedings does not give raise a cause of action *in presenti*. The petitioner is at liberty to respond to the impugned letter intimating the respondents that there is no concluded contract between them and that termination of such a contract does not arise. If the respondents persist in the current stand or pursue any conduct for recovering any costs claimed to have been incurred by them for having got the work executed by another agency, the

petitioner may initiate appropriate proceedings against such conduct either before the civil court of competent jurisdiction or before an arbitrator (if the petitioner is of the view that there was a concluded contract covered by an arbitration clause and that the termination was in transgression of the terms of the contract). The remedy to the civil court would always be open if there is no arbitral agreement.

At present, there is no cause of action and certainly not by way of an application under Article 226 of the Constitution of India. There are no merits. The writ petition is accordingly dismissed with liberty to the petitioner to pursue appropriate alternative remedy. No costs.

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GODA RAGHURAM, J

Dated:07-09-2006
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